

# Virginia's current regulations (and how that might change?)

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# Is IBT allowed?

- A. Yes.
- B. No.
- C. All of the above.

# Basis of ability to use water

- Riparian Doctrine
- Statutory Framework
- Regulatory Framework



# Riparian Doctrine

- Riparian Doctrine says that the right to use water in natural rivers, lakes, streams belongs to owners of the banks of such water bodies.
- Limitations:
  - Right of use, not ownership
  - Public water supplies have no special status
  - Use may not change quantity or quality
  - Use must be within the watershed - cannot remove from the riparian land
  - Can do anything until another riparian sues

# Statutory Framework

- IBT **Not** mentioned in the Code of Virginia
- The regulation, control, development and use of waters for all purposes beneficial to the public are within the jurisdiction of the Commonwealth [62.1-11.B].
- "Waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction and which affect the public welfare. [62.1-10 A].
- "Public water supply" is the highest priority beneficial use of waters [62.1-10 B].

# Regulatory Framework

- IBT **Not** mentioned in the Virginia Administrative Code
- Virginia Water Protection Permit Program regulates the withdrawal of surface waters for beneficial use. [need and impact]
- The Virginia Pollution Discharge Elimination System Permit Program regulates the discharge of effluent into state waters. [integrity of physical, chemical and biological processes]



# Huh? Interbasin Transfer...

- **Not** a Riparian Right
- **Not** prohibited by statute
- **Not** prohibited by regulation

So what does this mean?

- **Not** an issue when sources are adequate to meet water needs
- **Not** an issue until level of growth requires public supplies

# Public water supply drives IBT

- Public water supply necessarily removes water from riparian land and distributes it beyond the riparian parcel to its customer base.
- Increasing water needs is creating greater scarcity of supply
- Many public water supplies already include IBTs
- “Have nots” are not adequately protected by Riparian Doctrine or statutory framework.



# Review: Is IBT allowed??

- A public water supply may not have a riparian right to the water or the right to distribute water off the site of the withdrawal. **T or F**
- Public domestic water supply is a “beneficial use” of state waters that may be issued a permit to withdraw water. **T or F**
- Even with a valid state permit, a public water supply may be sued if the withdrawal or if a transfer of that water can be shown to have harmed a riparian landowner. **T or F**

# What DEQ does now

- Virginia regulates impacts of withdrawals and discharges within the context of current programs.
- No assumption that IBT is good or bad is made absent an analysis of the associated impacts.
- No arbitrary thresholds established for *de minimis* amounts or scale of basin that constitutes an IBT.

# What could drive DEQ to change?

- General Assembly action or State regulatory program or policy change
- Congressional action or federal regulatory program or policy change
- Over use of water resources leading to shortages or limited supply availability
- Political conflicts among localities or with neighboring states



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